

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TIGRAN OHANIAN, INDIVIDUALLY
AND ON BEHALF OF ALL OTHER
PERSONS SIMILARLY SITUATED,
AND REGGE LOPEZ, INDIVIDUALLY
AND ON BEHALF OF ALL OTHER
PERSONS SIMILARLY SITUATED,

Plaintiffs,

v.

APPLE INC. AND T-MOBILE USA, INC.
Defendants.

Case No. 1:20-cv-05162 (LGS)

[PROPOSED] JOINT PRETRIAL ORDER

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In accordance with the Court's August 30, 2021, Order [Dkt. 90] and Rule IV(B)(2) of the Court's Individual Rules and Procedures for Civil Cases, the Parties provide the Court with the following information:

I. Trial Counsel

A. For Plaintiff Tigran Ohanian (“Ohanian”):

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C. For Apple Inc. (“Apple”):

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II. Statement on Jurisdiction

This Court has original jurisdiction over this matter pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which Plaintiff purports that there are 100 or more putative class members, a member of the putative class is a citizen of a different state than Apple and T-Mobile, and the amount in controversy exceeds the sum or value of \$5,000,000.00, excluding interest and costs. The Federal Arbitration Act grants jurisdiction to resolve a motion to compel arbitration to any United States District Court that would have jurisdiction over the case but for an agreement to arbitrate. 9 U.S.C. § 4.

III. Statement of Claims to Be Tried

This trial is to resolve the factual question of whether Ohanian contractually agreed to arbitrate his claims against T-Mobile, and whether under the Federal Arbitration Act, 9 U.S.C. §§ 3 and 4, Ohanian’s claims should be stayed and Ohanian should be compelled to pursue his claims in arbitration.

IV. Days For Trial and Bench Trial

The Parties believe the trial will last 1-2 days. In accordance with the Court’s March 25, 2021, Order [Dkt. 58], the trial will be a bench trial. Counsel jointly requested that the trial proceed

in person. However, pursuant to the parties' discussion with chambers on October 5, 2021, counsel understands that the Court has determined to proceed virtually. As such, the trial will proceed virtually via Zoom.

V. Non-Consent to Magistrate Judge

The Parties have not consented to trial by a magistrate judge.

VI. Witnesses

A. For Ohanian

Ohanian will testify during his case in chief. Ohanian is expected to testify regarding (i) the circumstances surrounding his purchase of a T-Mobile SIM card and prepaid line of service from a T-Mobile retail store in New York City on April 19, 2016; and (ii) the paperwork he received in connection with his purchase of the T-Mobile SIM card and prepaid line of service.

Ohanian anticipates that his testimony will last approximately one hour.

B. For T-Mobile

T-Mobile intends to call the following witness in its case in chief:

Brian Anderson. T-Mobile expects Mr. Anderson to testify regarding T-Mobile's practice and procedures with regard to the creation of the Prepaid Confirmation Form and the practice and procedure by which that Form was regularly provided to T-Mobile customers purchasing pre-paid cellular service in 2016. T-Mobile estimates that Mr. Anderson's testimony will take one to two hours.

If necessary, T-Mobile intends to call the following witness:

Shane Sanders. T-Mobile expects Mr. Sanders to testify regarding certain T-Mobile exhibits and business records. T-Mobile estimates that Mr. Sanders' testimony will take ten minutes.

C. For Apple

Apple does not anticipate calling any witnesses in this limited scope trial.

VII. Deposition Designations

None as all deposed witnesses are available to testify.

VIII. Exhibits¹

A. For Ohanian

1. Ohanian's Original Receipt (P_000001 – P_000002)**

B. For T-Mobile

1. Ohanian's Receipt (TMUS0000003 – 0000004)**
2. Ohanian's Prepaid Confirmation Form (TMUS0000001 – 0000002)
3. Metadata to Prepaid Confirmation Form (TMUS0000005)
4. T-Mobile's Terms & Conditions**
5. Declaration of Shane Sanders [Dkt. 80-1]

C. For Apple

1. Apple does not anticipate introducing any evidence in this limited scope trial.

¹ In accordance with the Court's Individual Practice Rule IV(B)(2)(h), the Parties have included one star next to exhibits in which there are no authenticity objections and two stars for exhibits in which there are no objections.

IX. Objections to Exhibits

Ohanian objects to T-Mobile's Exhibit No. 2 under FRE 901. Ohanian objects to T-Mobile's Exhibit No. 3 under both FRE 901 and FRE 802. Ohanian objects to T-Mobile's Exhibit No. 5 under FRE 802.

X. Discovery Responses To Offer Into Evidence

A. For Ohanian

1. Defendant T-Mobile USA, Inc.'s Answers and Objections to Plaintiff's Interrogatories (served May 7, 2021)
2. Defendant T-Mobile USA, Inc.'s Responses and Objections to Plaintiff's Request for the Production of Documents (served May 7, 2021)
3. Defendant T-Mobile USA, Inc.'s Responses and Objections to Plaintiffs' Requests to Admit (served May 7, 2021)

B. For T-Mobile

1. Plaintiff Tigran Ohanian's Responses and Objections to Defendant T-Mobile USA, Inc.'s First Set of Interrogatories (served May 7, 2021)
2. Plaintiff Tigran Ohanian's Responses and Objections to Defendant T-Mobile USA, Inc.'s First Requests for Admission (served May 7, 2021)

C. For Apple

1. Apple does not anticipate introducing any evidence in this limited scope trial.

XI. Motions in Limine

None.

XII. Stipulations of Uncontested Facts

1. T-Mobile is incorporated in Delaware with its principal place of business in Washington.
2. T-Mobile provides wireless communication services throughout the United States.

3. Ohanian resides in Russia and is a Russian citizen.
4. In April 2016, Ohanian visited New York from his home in Russia.
5. On April 19, 2016, Ohanian visited a T-Mobile store located at 1180 6th Ave., New York, NY 10036-8401.
6. During this April 19, 2016, visit, Ohanian purchased a T-Mobile prepaid line of service for a mobile number ending in 9539, and he purchased a SIM Starter Kit.
7. Ohanian paid T-Mobile \$103.43 for the prepaid service and SIM Starter Kit.
8. The T-Mobile sales representative who assisted Ohanian with the transaction handed Ohanian a receipt.
9. T-Mobile's March 17, 2016 Terms and Conditions were in effect on April 19, 2016.
10. A true and correct copy of T-Mobile's March 17, 2016 Terms and Conditions are attached to the Declaration of Christopher Muzio as Exhibit I and on file as Dkt. 32-9.

XIII. Statement of Elements of Damages

Not applicable as this trial is limited to whether Ohanian agreed to arbitrate his claims asserted against T-Mobile in Plaintiffs' Complaint [Dkt. 1].

XIV. Other Requested Relief

T-Mobile requests that the Court enter an order staying this action and compelling Ohanian to arbitrate his claims against T-Mobile.

XV. Unanimous Verdict

Inapplicable as the trial is a bench trial.

Dated: October 5, 2021

Respectfully submitted,

/s/ Brett D. Jaffe

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CERTIFICATE OF SERVICE

I certify that on October 5, 2021, I caused to be served a copy of the foregoing [Proposed] Pretrial Order via the Court's ECF system on all counsel of record registered through that system to receive electronic filings in this case.

Respectfully submitted,

/s/ Brett D. Jaffe